



September 4, 2018

President Dr. W. Hubert Keen  
Office of the President  
Nassau Community College  
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*Sent via Electronic Mail (PresidentsOffice@ncc.edu, BoardOfTrustees@ncc.edu)*

Dear President Keen:

We write to follow up on our letter of April 3, 2018, which asked that Nassau Community College (NCC) rescind or amend Policy 3100, governing “News Media Relations.” We have now had an opportunity to review a draft of amendments to that policy, which is to be discussed at the September 4, 2018, meeting of the Nassau Community College Policy & Planning Committee. As that meeting is set to take place today, we ask that you share a copy of this letter, and our prior correspondence, with the members of that committee.

The amendments make substantial improvements on the policy currently in place. However, the policy as amended would keep in place a prior restraint on faculty members’ speech, requiring that all “statements to the news media” concerning events of public concern “must be . . . approved and disseminated by” NCC’s administration. As a result, administrators at NCC would have unfettered discretion to prohibit faculty members from speaking as private citizens on matters of public concern (a right protected by the First Amendment<sup>1</sup>) or on matters pertaining to their fields of expertise (a right protected by both the First Amendment and basic norms of academic freedom<sup>2</sup>).

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<sup>1</sup> *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006).

<sup>2</sup> *See, e.g., Healy v. James*, 408 U.S. 169, 180 (1972) (“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”).

The proposed policy's preservation of a prior restraint is plainly inconsistent with NCC's nonnegotiable obligations under the First Amendment, the "chief purpose" of which was to prevent the use of prior restraints,<sup>3</sup> the "most serious and least tolerable infringement on" freedom of expression.<sup>4</sup> It is likewise inconsistent with NCC's obligations as an institution accredited by the Middle States Commission on Higher Education, whose standards for accreditation require that an institution both "possesses and demonstrates . . . a commitment to academic freedom, intellectual freedom, [and] freedom of expression."<sup>5</sup>

In lieu of granting NCC administrators authority that the First Amendment forbids, NCC should either rescind the policy entirely, or amend it further to recognize and enshrine faculty members' First Amendment rights as NCC policy. While we appreciate that the perfect should not be the enemy of the good, improvements on an unconstitutional policy do not necessarily render the new policy lawful or just.

If NCC intends to retain the policy, modest amendments might address the college's interests while diminishing the possibility that the policy will infringe upon its faculty members' First Amendment rights.

First, the current draft provides:

If a College event attracts news media interest, all press releases and statements to the news media must be routed through, approved and disseminated by the Office of Governmental Affairs and Media Relations.

NCC has a legitimate interest in ensuring the "efficient management of media relations by appropriate officials on behalf of the College." Yet the policy as written sweeps far more broadly than necessary to serve that interest, requiring faculty members to obtain an administrator's permission to speak on matters of public concern, even if they do not purport to speak on behalf of NCC. In advancing this oversight authority to administrators, the policy provides no guidance as to the exercise of that discretion, effectively authorizing NCC to engage in wholesale viewpoint discrimination.

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<sup>3</sup> *Near v. Minnesota*, 283 U.S. 697, 713 (1931).

<sup>4</sup> *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

<sup>5</sup> MIDDLE STATES COMM'N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (13th ed., rev. Nov. 2015), available at <http://www.msche.org/wp-content/uploads/2018/06/RevisedStandardsFINAL.pdf>.

Simple revisions would improve this policy while accomplishing the college's interests:

If a College event attracts news media interest, all press releases and statements **made on behalf of the College** to the news media must be routed through, approved and disseminated by the Office of Governmental Affairs and Media Relations. **Faculty members are not required to obtain approval, but are encouraged to make clear that their statements are their own and not made on behalf of the College.**

This revision would assist NCC's administrative staff in funneling statements on behalf of the institution to the appropriate staff members, while preserving faculty members' First Amendment right to speak to journalists or other members of the public without monitoring or prior restraint.

Second, the amended policy provides:

While on College property or upon entering College facilities, all news media representatives must be accompanied by a staff member designated by the Office of Governmental Affairs and Media Relations.

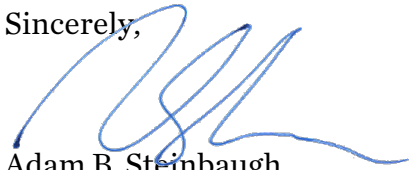
This language appears to seek to address the college's interests in accompanying external news media representatives who seek access to the campus without the invitation of a faculty member or student, or in assisting journalists as they navigate the campus. Yet this policy, as written, would require journalists, students, and faculty members to subject interviews to monitoring by government officials. It would further require students and faculty members to alert administrators whenever they are interviewed on campus, chilling their ability to engage in off-the-record or background interviews.

These defects could easily be remedied with modest amendments to the policy:

While on College property or upon entering College facilities, all news media representatives **invited by a faculty member or student may** be accompanied by a staff member designated by the Office of Governmental Affairs and Media Relations **upon request of the interviewee.**

FIRE appreciates that NCC endeavors to improve upon its policies, and we would be pleased to assist NCC in crafting policies that both protect First Amendment rights and the Middle States requirement that NCC demonstrate a commitment to freedom of expression.

Sincerely,



Adam B. Steinbaugh  
Director, Individual Rights Defense Program

cc: Kathy Weiss, Chair, Policy & Planning Committee (kathyb.weiss@gmail.com)